

Meyner and Landis LLP

Counsellors at Law
One Gateway Center
Suite 2500
Newark, New Jersey 07102

Robert B. Meyner
(1908-1990)

TM

973-624-2800

Fax: 973-624-0356

Email: frperkins@meyner.com

reply to writer

March 12, 2002

Via Electronic Mail and Federal Express

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
445 12th Street, S.W. – Portals
Washington, DC 20554

*Re: Application by Verizon-New Jersey Inc. for Authorization to Provide
In-Region InterLATA Services in State of New Jersey
Docket No. 01-347*

Dear Mr. Caton:

This constitutes the comments of the New Jersey Cable Telecommunications Association (“NJCTA”) in response to the Commission’s Public Notice of March 8, 2002 (“Public Notice”), in this matter. The Public Notice notes that late in the day on March 7, 2002, the Commission received a written *ex parte* presentation from the New Jersey Board of Public Utilities (“NJBPU”) consisting of the NJBPU’s final order¹ on rates for unbundled network elements (“UNEs”) in New Jersey. The Public Notice affirms that the Verizon New Jersey Inc.’s (“Verizon NJ”) application relies on the NJBPU’s previously issued Summary Order² to demonstrate that its New Jersey UNE rates are TELRIC-compliant. The Public Notice encourages interested parties to respond to the

¹ *I/M/O the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.* Docket No. TO00060356 (Decision and Order, released March 6, 2002) – “Final Order,”

² *I/M/O the Board’s Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.* Docket No. TO00060356 (Summary Order, released December 17, 2001 – “Summary Order,”

NJBPU's newly filed *ex parte*. Finally, it notes that a short comment period is established because of the imminent deadline for Commission ruling on Verizon NJ's application.

We have previously filed comments and reply comments on behalf of NJCTA in this matter.³ In both the NJCTA Initial Comments and in the NJCTA Reply Comments we specifically addressed, almost exclusively, concerns about the fact that no final order on UNE rates had been issued by the NJBPU prior to Verizon NJ filing its application here;⁴ about procedural irregularities in the determination of the rates;⁵ and, the fact that appeals of the validity of the rates were likely.⁶ Under the circumstances, we noted that compliance with all checklist items necessary for approval by the Commission was not possible.

The last minute submission of the NJBPU's Final Order does nothing to alter the arguments put forth in our earlier submissions. First, as noted in the Public Notice, Verizon NJ's application relies upon the earlier issued Summary Order, which, as we pointed out in our earlier submissions is without legal effect.⁷ Secondly, the Final Order is subject to appeal by any party, including Verizon NJ, for a period of time beyond which the Commission must act on Verizon NJ's application,⁸ and such an appeal is

³ See, *Comments of the New Jersey Cable Telecommunications Association to the Application of Verizon New Jersey, Inc. (Verizon NJ) for Approval to Provide In-Region Long Distance Services*, ("NJCTA Initial Comments") filed on January 14, 2002; and, *Reply Comments of the New Jersey Cable Telecommunications Association to the Application of Verizon New Jersey, Inc. (Verizon NJ) for Approval to Provide In-Region Long Distance Services*, ("NJCTA Reply Comments") filed on February 1, 2002.

⁴ NJCTA Initial Comments, pp. 4-6; NJCTA Reply Comments p. 2.

⁵ NJCTA Initial Comments, p. 5, fn8.

⁶ NJCTA Initial Comments, p. 7.

⁷ NJCTA Initial Comments, pp. 6-8, NJCTA Reply Comments, p. 3.

⁸ NJCTA Initial Comments, p. 16 fn.14. (At this point the deadline for any party to file a Notice of Appeal is on or about April 22, 2002, more than a month beyond the Commission's deadline for action.)

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likely.⁹ Finally, should reliance be placed upon the Final Order in making a determination on Verizon NJ's application, such would violate the Commission's own regulation on an application being complete upon its filing to the great detriment of commenting parties and the public.¹⁰

In addition to the foregoing, concepts of basic fairness dictate that the NJBPU's *ex parte* submission should be given no weight. Its late filing, precipitated in the first instance by Verizon NJ's premature filing of its application, along with the Final Order's length and complexity, preclude a meaningful review and analysis of its contents to be properly considered by the Commission in any determination it makes in this matter before the deadline for making such determination. Verizon NJ's gaming of the system in this matter also should not be rewarded. As noted in our earlier filings Verizon NJ, alone, placed the NJBPU in a very difficult position, such that one of the two commissioners voting on the NJBPU's consultative report took special pains to articulate his displeasure.¹¹ The short comment period set out in the Public Notice and dictated by the last minute filing of the 280 page Final Order may be the best evidence of the basic unfairness of its consideration by the Commission. Had Verizon NJ waited until the issuance of a final order in the UNE rate proceeding before the NJBPU before filing its application, legally established rates would have been established; parties would have

⁹ NJCTA Initial Comments, p. 7. An added vexing issue is the requirement of the Final Order that Verizon NJ waive, not later than March 12, 2002, its right to challenge the UNE rates set out therein. Final Order p. 279. A motion for such a directive, made by several parties before the NJBPU, met with the response from Verizon NJ that "there is no basis in the record or in the relevant provisions of the Telecommunications Act for AT&T's unwarranted demand." Verizon NJ letter to Kristi Izzo, NJBPU Secretary, March 11, 2002.

¹⁰ See especially the separate statement of Commissioner Michael J. Copps, Concurring; and Statement of Commissioner Kevin J. Martin, Approving in Part and Concurring in Part; *Application of Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc. and Verizon Select Services, Inc. for Authorization to Provide In-Region InterLATA Services in Rhode Island (CC Docket No. 01-324).*

¹¹ NJCTA Initial Comments, p. 7.

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been in position to fairly and fully comment upon the NJBPU's final order; the time for any party giving notice of appeal from such an order would have expired prior to the deadline by which the Commission would have had to have acted; and, the Commission and its staff would have had the opportunity to properly consider the contents of such an order and all comments of interested parties with respect to the same. None of that happened because Verizon NJ blatantly forced the NJBPU to act, putting all involved, except Verizon NJ, in an extremely disadvantageous position with respect to this matter. Such should not be rewarded, as such reward will only ensure repetition and will be seriously to the detriment of the public interest.

For all of the reasons set out here, the Commission should give no weight to the NJBPU's Final Order in considering Verizon New Jersey's application. To the extent that all items on the statutory checklist were not met at the date of Verizon NJ's filing, a determination of full compliance cannot be made.

Respectfully submitted,

Francis R. Perkins

Francis R. Perkins
MEYNER AND LANDIS LLP
One Gateway Center, Suite 2500
Newark, NJ 07102
(973) 624-2800

Attorneys for New Jersey Cable
Telecommunications Association

FRP:mm

cc: Service List
A. Johns
S. Pie
J. Swift
John Lynch, DOJ